



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Edwin H. Smith, Esq.
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6101 Frederick Avenue
St. Joseph, MO 64506

APR 27 2009

RE: MUR 6072
Saint Joseph Area Chamber
of Commerce

Dear Mr. Smith:

On September 22, 2008, the Federal Election Commission notified your client, the Saint Joseph Area Chamber of Commerce ("St. Joseph") of a complaint alleging a violation of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on April 21, 2009, voted to exercise its prosecutorial discretion and dismiss this matter as to St. Joseph. *See Heckler v. Chaney*, 470 U.S. 821 (1985). The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

For future reference, the safe harbor at 11 C.F.R. § 110.13 and 114.4(f) that exempts the staging of federal candidate debates from the Act's ban on corporate contributions or expenditures in connection with federal elections only covers nonprofit corporations organized under 26 U.S.C. §§ 501(c)(3) or (c)(4) and qualified media entities.

Documents related to the case will be placed on the public record within 30 days. *See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files*, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script, reading "Susan L. Lebeaux", is written over the typed name.

Susan L. Lebeaux
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Saint Joseph Chamber of Commerce

MUR: 6072

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission ("Commission") by David R. Browning, the Libertarian nominee for Missouri's 6th Congressional District. See 2 U.S.C. § 437g(a)(1). For the reasons set forth below, the Commission dismissed the complaint's allegations as to Saint Joseph Area Chamber of Commerce ("St. Joseph") and closed the file as to this respondent.

II. DISCUSSION

A. Factual Summary

St. Joseph, a non-profit corporation, scheduled a candidate debate on October 3, 2008, in which the participants invited to attend were the individuals who had won the Democratic and Republican nominations in Missouri's August 5, 2008, primary election for the U.S. House of Representatives in the State's 6th Congressional District. Prior to the scheduled debate, complainant, who had won the Libertarian Party's primary election for Missouri's 6th Congressional District and who was qualified to appear on the general election ballot, alleged in a complaint filed with the Commission that St. Joseph had improperly denied him the opportunity to participate in the debates by failing to use pre-established, objective criteria, and by promoting certain candidates over others, in violation of the Commission's debate staging regulation at 11 C.F.R. § 110.13.

In its response provided prior to its scheduled debate, St. Joseph asserts that its determination to limit participation to the two winning primary candidates was based on pre-established objective criteria, not based solely on party affiliation, and the debate was not structured to promote or advance one candidate over another. Rather, according to St. Joseph, due to the time constraints of a less-than-one-

1 hour debate, it had determined that only those candidates with significant public support would be invited
2 to debate. St. Joseph Response at 1-2. It provided a copy with its response of the then-most recent poll
3 conducted by Survey USA showing that complainant had only a maximum of 6% of the vote in
4 Missouri's 6th Congressional District (in the "other" category). As such, St. Joseph states that it
5 "determined that the objective factors of public interest do not weigh in favor of inviting the complainant
6 to participate in the forum." *Id.* at 2. According to the Survey USA poll, the two debate participants
7 received 48% and 44% of the vote, respectively. Thus, it appears that St. Joseph used pre-established,
8 objective criteria and did not arrange the debates in a manner that promoted or advanced one candidate
9 over another, as required by sections 110.13(b) and (c).

10 B. Analysis

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12 The Act prohibits "any corporation whatever" from making contributions or expenditures in
13 connection with federal elections. 2 U.S.C. § 441b(a). However, 2 U.S.C. § 431(9)(B)(ii) exempts from
14 the definition of "expenditure" "nonpartisan activity designed to encourage individuals to vote or register
15 to vote," which has been construed to exclude "funds provided to defray costs incurred in staging
16 candidate debates in accordance with the provisions of 11 C.F.R. §§ 110.13 and 114.4(f)" from the
17 definition of "contribution" and "expenditure," respectively. See 11 C.F.R. §§ 100.92 and 100.154.
18 Section 110.13(a)(1), in turn, permits "[n]onprofit organizations described in 26 U.S.C. §§ 501(c)(3) or
19 (c)(4) and which do not endorse, support, or oppose political candidates or political parties" to "stage
20 candidate debates in accordance with this section and 11 C.F.R. § 114.4(f).¹ The regulation leaves the
21 structure of the debate to the discretion of the staging organization, provided that the debate includes at
22 least two candidates, the organization does not arrange the debates in a manner that promotes or advances

¹ Section 114.4(f) allows qualified candidate debate staging organizations to use their own funds to stage debates, and to accept funds from corporations for that purpose.

one candidate over another, and the criteria for candidate selection are objective and pre-established, under 11 C.F.R. §§ 110.13(b) and (c).²

In past "debate" MURs, the Commission has considered a number of different criteria to have been acceptably "objective," including percentage of votes by a candidate received in a previous election; the level of campaign activity by the candidate; his or her fundraising ability and/or standing in the polls; and eligibility for ballot access. See MURs 4956, 4962, and 4963 (Gore 2000, et al.); MUR 5395 (Dow Jones, et al.); and MUR 5650 (University of Arizona). Cf. *Arkansas Educational Television v. Forbes* 523 U.S. 666, 683 (1998) (in a case involving a First Amendment challenge to state-owned television network's decision on a candidate's exclusion from a televised debate, the Supreme Court observed that "objectivity" is based on a "reasonable, viewpoint neutral exercise of journalistic discretion"). Based on St. Joseph's response to the complaint, it appears that St. Joseph used pre-established, objective criteria and did not arrange the debates in a manner that promoted or advanced one candidate over another, as required by sections 110.13(b) and (c).

St. Joseph, however, a corporate entity, is a tax-exempt business league organized under section 501(c)(6), rather than under sections 501(c)(3) or (4), as required by the Commission's debate staging regulation. Accordingly, St. Joseph does not qualify for the safe harbor created by section 110.13(a)(1).

In an analogous situation, the Commission dismissed the matter in an exercise of its prosecutorial discretion. In that matter, MUR 5650 (University of Arizona), a Libertarian candidate filed a complaint with the Commission because he was excluded from a debate sponsored by the University. The University was incorporated, but tax-exempt under 26 U.S.C. § 115 as an "integral part of a government agency," rather than under 26 U.S.C. §§ 501(c)(3) or (c)(4). According to the University, the context of

² In its *Explanation and Justification for Corporate and Labor Activity* at 60 Fed. Reg. 64260 (December 14, 1995), the Commission stated that section 110.13 does not require that candidate selection criteria be reduced to writing or be made available to all candidates. *Id.* at 64262.

the debate was as follows: "in March 2004, [the Associated Students of the University of Arizona ("ASUA"), a department of the University], decided that its programs for the 2004 Spring and Fall semesters would be united under one theme, coined 'Civic Engagement,'" and that "ASUA's goals included generating as much student interest in its Civic Engagement program as possible." University Response at 3. It asserted that voter registration, education, and voting were the central objectives of the program, and that "[t]he Education component of the Civic Engagement series involved speeches by various political speakers and one debate on campus, which is the debate at issue in this matter." *Id.* The First General Counsel's Report for MUR 5650 stated that, as the University had met all the other criteria for staging debates that would exempt it from section 441b(a) liability, there did not appear to be a good policy reason under the circumstances presented for denying it the benefit of the debate staging regulation based only on its tax status, and therefore recommended that the Commission exercise its prosecutorial discretion and dismiss the matter. MUR 5650 First General Counsel's Report at 7-8.

In extending the debate staging exemption to nonprofit organizations organized under 26 U.S.C. § 501(c)(3) (generally charitable, religious, or educational organizations), the Commission noted that such organizations are prohibited by statute from participating in or intervening in any political campaign on behalf of any candidate for public office. *Explanation and Justification, Funding and Sponsorship of Federal Candidate Debates*, 44 Fed. Reg. 76734 (December 27, 1979). As for extending the exemption to section 501(c)(4) organizations, the Commission noted that, although such organizations are permitted to participate in a political campaign to a limited degree, those that choose to do so would not qualify as ones that do not endorse, support, or oppose political candidates or political parties; thus, they would not be able to stage debates. *Id.* Section 501(c)(6) organizations (business leagues) include chambers of commerce, like Northland, as well as economic development corporations, real estate boards, trade boards, professional football leagues, and other types of business leagues. Chambers of commerce are

1 characterized by a common business interest, which the organization typically promotes. Section
2 501(c)(6) organizations may engage in limited political activities that inform, educate, and promote their
3 given interest. They may not, however, engage in direct expenditures advocating a vote for a political
4 candidate or cause.

5 According to its website, St. Joseph's stated mission is "to create an environment that allows
6 business to succeed and the community to prosper." See www.saintjoseph.com. The Commission has
7 found no indication that St. Joseph supports, opposes, or endorses candidates or political parties. See
8 11 C.F.R. § 110.13(a)(1). Indeed, on its website, its President states:

9 Chambers of Commerce don't endorse political candidates or take partisan sides
10 at any level of government. We do, however, pursue business-related issues and
11 disseminate information regarding each candidate's views and platform as they
12 relate to (or impact) the business sector and the local economy. *Id.*

13
14 Thus, like the University of Arizona in MUR 5650, it appears that St. Joseph has met all the
15 substantive criteria for staging debates that would exempt it from section 441b(a) liability, except for the
16 nature of its tax status. Moreover, part of the relief requested by the complainant—"the immediate
17 intervention of the Commission to declare the debate in violation of the rules of the Commission," and to
18 include the complainant "in the aforesaid debates"—is no longer available. Therefore, the Commission
19 has determined that there is no good policy reason for proceeding in this particular case, and has decided
20 to exercise its prosecutorial discretion, dismiss the complaint as to the St. Joseph Area Chamber of
21 Commerce, and close the file as to this respondent. See *Heckler v. Chaney*, 470 U.S. 821 (1985).